

Amendments to the Drawings:

Please replace drawing sheet 4 (Fig. 4) with the attached replacement drawing sheet.

Applicant notes that the phrase "compute distance" previously contained in block S401 is amended to the phrase "measure distance." Likewise, the phrase "computed distance" previously contained in block S402 is amended to the phrase "measured distance," which more closely corresponds to paragraph [0031] of the specification, as published.

REMARKS

Prior to entry of this amendment, claims 29-48 were pending in this application. To expedite prosecution of this application, and without conceding the merits of the below listed rejections, applicant has amended claims 29-31, 39-42, and 44-46. Applicant reserves the right to pursue these claims in unamended or other forms in a continuation or other application. Applicant has also corrected an informality in claim 45. Applicant has not canceled or added claims. Accordingly, claims 29-48 will remain pending upon entry of this amendment. In addition, applicant submits a replacement drawing sheet. No new matter is added.

In the Office Action mailed January 26, 2009, pending claims 29-31 and 39-48 were rejected and claims 32-38 were objected to. More specifically, the status of the application in light of this Office Action is as follows:

- (A) Claims 29-31 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.
- (B) Claims 29-48 were rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement.
- (C) The specification and claims 32-38 were objected to.

Applicant appreciates Examiner's indication that claims 29-48 would be allowable if the Section 101 and Section 112 rejections are overcome.

A. Response to the Section 101 Rejection of Claims 29-31

The Office Action rejected claims 29-31 as directed to non-statutory subject matter. (Office Action, page 4-5).

Without conceding to the merits of these rejections, applicant has amended independent claim 29 to state "employing at least an optical pickup to measure a

distance". This amendment is supported at least by paragraph [0005] of applicant's disclosure, as published. Claims 30 and 31 depend from claim 29. Applicant has also made a similar amendment to claim 46.

Accordingly, applicant respectfully requests that the Section 101 rejection of claims 29-31 be withdrawn.

B. Response to the Section 112 Rejection of Claims 29-48

The Office Action rejected claims 29-48 as failing to comply with the written description requirement of Section 112. Specifically, the Office Action states that (1) the terms "computing" and "compute" as referenced by claims 29-48 are not disclosed by the specification; (2) the term "controller" as referenced by claims 39-45 is not disclosed by the specification; and (3) the phrase "processor-readable medium" as referenced by claims 46-48 is not disclosed by the specification. (Office Action, page 3-4).

According to MPEP § 2163.02, "[a]n objective standard for determining compliance with the written description requirement is, 'does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.'" Also, "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement."

Applicant respectfully submits that the phrase "compute," and conjugates thereof, as previously referenced by each of the independent claims, was supported by applicant's disclosure, e.g., paragraph [0031], as published. For example, one skilled in the art would recognize that the "measuring the distance between the reflection and surface layers" of paragraph [0031] supports applicant's previous use of "computing," "compute," and "computed." However, to expedite prosecution and to more closely correspond to paragraph [0031] of the specification, applicant has replaced "compute," and conjugates thereof, with "measure," and conjugates thereof. Applicant respectfully submits that "measure," and conjugates thereof, of claims 29-31, 39-41, and 46 are

supported at least by the statement "measuring the distance between the reflection and surface layers" of paragraph [0031] of applicant's published application.

Further, Applicant respectfully submits that the controller referenced by claims 39-45 is also supported by applicant's disclosure, e.g., paragraphs [0005] and [0006], as published. For example, one skilled in the art would recognize that the "optical device" of paragraph [0005] and "optical disk system" of paragraph [0006] would include a controller capable of performing applicant's technology. For at least these reasons, applicant's disclosure reasonably conveys, to one of skill in the art, that the applicant was in possession of the "controller" of claims 39-45. However, to expedite prosecution and to more closely match the specification, applicant has replaced "controller" with "optical disk system" in claims 39-45.

Likewise, applicant respectfully submits that the "processor-readable medium" referenced by claims 46-48 is supported by applicant's disclosure, e.g., paragraphs [0005] and [0006], as published. For example, one skilled in the art would recognize that the "optical device" of paragraph [0005] and "optical disk system" of paragraph [0006] would include a medium capable of storing instructions of the type described by claims 46-48. For at least this reason, applicant's disclosure reasonably conveys, to one of skill in the art, that the applicants were in possession of the "processor-readable medium" of claims 46-48.

For at least the reasons discussed above, applicant respectfully requests that each of the Section 112 rejections be withdrawn.

C. Response to the Objection to the Specification

The Office Action objects to the specification as not supporting the terms "computing," "compute," "controller," and "processor-readable medium."


In light of the above discussion of the Section 112 rejection, applicant respectfully request that this objection be withdrawn.

Conclusion

In view of the foregoing, the pending claims comply with the requirements of 35 U.S.C. § 101 and 35 U.S.C. § 112, and are patentable over the applied art. The applicants accordingly request reconsideration of the application and a mailing of a Notice of Allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Davin Chin at (206) 359-8000.

Respectfully submitted,
Perkins Coie LLP

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Appendix